IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 950 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALABHAI KESHRAJI KHANT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 950 of 1997

MR B M GUPTA for Petitioner No. 1-3

MS HANSA PUNANI, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 06/02/2003

ORAL JUDGEMENT

This is an appeal under Section 2 of Section 374 of the Code of Criminal Procedure, 1973 (for short, "the Code") challenging the judgment and conviction order

dated 15/09/97, recorded by the learned Additional Sessions Judge, Sabarkantha at Modasa, in Sessions Case No. 64 of 1996. The learned trial Judge convicted the three appellants in the aforesaid case for offences punishable under Sections 306, 498(A) read with Section 114 of IPC and inflicted sentence as follows;

(a) Appellant no. 1 has been sentenced to suffer RI for five years and to pay fine of Rupees Two Thousand and in default of payment of fine he is directed to suffer further SI for one year for offences punishable under Section 306 IPC.

* This appellant has been sentenced to suffer RI for one year and three month and to pay fine of Rupees One Hundred and in default of payment of fine he is directed to suffer SI for six months for an offence punishable under Section 498(A) IPC.

* This appellant has been sentenced to suffer RI for one month and to pay fine of Rupees Two Hundred Fifty and in default of payment of fine he is directed to undergo further RI for seven days.

(b) The appellant no. 2 has been sentenced to suffer RI for three years and three months and to pay fine of Rupees One Thousand and in default of payment of fine he is directed to undergo further SI for six months for an offence punishable under section 306 IPC.

* This appellant has been sentenced to suffer SI for sixteen months and to pay fine of Rupees Seven Hundred Fifty and in default of payment of fine he is directed to undergo further SI for three months for an offence punishable under Section 498(A) IPC.

* This appellant is also sentenced to suffer SI for one month and to pay fine of Rupees Two Hundred Fifty and in default of payment of fine he is directed to undergo further SI for seven days for an offence punishable under Section 114 IPC.

(c) The appellant no. 3 has been sentenced to suffer SI for two and a half years and to pay fine of Rupees one Thousand and in default of payment of fine he is directed to undergo further SI for six months for an offence punishable under Section 306 IPC.

* This appellant has been sentenced to suffer SI for fifteen months and to pay fine of Rupees Seven Hundred Fifty and in default of payment of fine he is directed to further undergo SI for three months for an offence punishable under Section 498(a) IPC.

* This appellant has also been sentenced to suffer SI for seven days and to pay fine of Rupees Two Hundred Fifty and in default of payment of fine he is directed to further undergo SI for three days for an offence punishable under Section 114 IPC.

The trial court has directed that the substantive sentence shall run concurrently. The trial court has also directed that in case the fine is realized, then the full amount of fine be paid over under Section 357 of the said Code, to the father of the deceased woman, who also happens to be the complainant, after expiry of the period of limitation.

2. The facts of the case of the prosecution before the trial court can be briefly stated as follows;

The original complainant is a resident of village Jalam Khant's Muwada, Taluka Malpur, District Sabarkantha. However, since last two years he was staying at Village Thasra in Thasra Taluka of Kheda District. That, Samuben was the eldest daughter of the informant and that she had married about two years before the FIR was filed, with appellant no. 1 - Kalabhai Kesharaji. That appellant no. 1, Kalabhai Kesharaji was studying in the college. It seems that the said appellant needed money for prosecuting his studies as per the case of the prosecution and he used to demand money and other amenities from his in-laws, through his wife Samuben. It is also the case of the prosecution that the first appellant used to ill-treat Samuben and he used to tell her that she was totally illiterate. It is further contended that even the other two appellants also used to ill-treat the appellant.

3. Ultimately, the victim, Samuben committed suicide on 18/03/96 at about 9.00 PM. The prosecution has alleged that, on the one hand the appellant abated the act of suicide, by Samuben. The prosecution has also alleged that the appellants had extended cruel treatment to the said woman which resulted in the commission of suicide by her. Therefore, after the death of the deceased, FIR was filed by the father of the victim. It was investigated and thereafter, chargesheet was filed. Thereafter, the case was ordered to be committed to the Court of Sessions and there it was registered as Session Case NO. 64 of 1996. The learned Additional sessions Judge supplied the copies of police investigation papers and after recording all the evidence, further statements were recorded, under Section 313 of the said Code. Arguments were heard and at the close of the trial, the trial court found that the appellants were guilty for the aforesaid offences. After hearing the appellants on the point of quantum of punishment, the learned Judge inflicted the aforesaid punishment on the aforesaid appellants.

4. Feeling aggrieved by the said judgment and conviction order of the trial court, the appellants herein have preferred this appeal before this Court. It is the contention of the appellants that there was absolutely no evidence before the trial court to show that the appellants had ill-treated Samuben and had abated the commission of suicide by her. It is also contended that the trial court has not properly appreciated the evidence on record. That the conviction order is illegal and it requires to be quashed and set aside. It is, therefore, prayed that the present appeal be allowed, the judgment and conviction order of the trial court be set aside and the appellants may be acquitted of the offences in question.

5. On receiving the appeal, the appeal was admitted and appellant nos. 2 and 3 were released on bail, pending trial. Appellant no. 1 continued to be in jail and it is reported that he has served out the sentence awarded to him.

6. When the matter was called out for hearing, Mr.B M Gupta appeared on behalf of the appellant and argued the matter. On the other hand, Ms.Hansa Punani, learned APP appeared on behalf of the State and argued the matter.

7. It may be incidentally noticed here that on some

occasions the learned advocate for the appellant was not present. The appeal could not be dismissed for default also. It could not be decided on merit, in the absence of the concerned advocate or the party. Therefore, with a view to protect the interest of the appellant, Mr. M S Desai, an advocate practising in the Court since many years was appointed as advocate amicus curiae. He voluntarily agreed to assist the Court. Even on the date on which the matter was argued by the learned Advocate for the appellant, Mr.Desai remained present and actively assisted the Court.

8. During the course of hearing, it can be gathered that so far appellant no. 1 is concerned, he was the husband of deceased - Samuben. The witnesses have consistently deposed before the Court that the first appellant was studying in a College and therefore, he was in need of money. It is also the evidence on record that the first appellant was not doing any job. He was not earning and therefore, he needed money for prosecuting his studies. The witnesses have also deposed before the trial court that the first appellant used to call for money from the in-laws, through Sambu, very often.

9. On this aspect of the case, we find the evidence of the informant, which also supports the said case of the State.

10. Sabaji Ajmerji, Ex. 10, PW-1, is a witness who is the father of the deceased Samuben. He has stated before the Court on oath that Samuben used to come to his residence and used to tell her mother that the appellant insisted on bringing money from her parents. It is also stated that the first appellant used to tell her that she was illiterate, therefore, she should bring money from her father. It is, further, stated that the first appellant used to extend mental cruelty to Samuben. The witness has again reiterated the said fact in Para 2 also. The witness was cross-examined at length and even during the lengthy cross-examination, nothing fruitful has been derived.

11. The witness has stood the test of cross-examination and his evidence has not been shaken during the lengthy cross-examination. The said evidence of the informant has been amply supported by his FIR, Ex. 11, which has been filed without any loss of time. There also the aforesaid averments have been made, showing that the first appellant used to ill-treat the deceased and that he used to call for money, time and again, for prosecuting his studies. The evidence of harassment

given by the witness has been amply supported by the said FIR.

12. Somiben Sabaji, Ex. 12, is a witness who is the mother of the deceased. She has also stated that the deceased used to come to her and used to complain to her about the harassment and cruel treatment extended to her by the first appellant. She has also stated that the deceased used to convey to her that the first appellant was demanding money for prosecuting his studies. This shows that the evidence of Somiben fully supports the evidence of the father - informant.

13. PW-3, Ramanbhai Sababhai, Ex. 13, is the brother of the deceased. He also states that the deceased used to tell them that the first appellant used to extend ill-treatment to her and that the first appellant used to demand money for prosecuting his study. Therefore, even this witness fully supports the evidence of his parents. The above witnesses have faced cross-examination at a great length. However, all the three witnesses have stood the test of cross-examination and their evidence has not been shaken to any extent. The trial court has accepted the evidence of these witnesses for the reasons recorded in the judgment. In fact, cogent reasons have been shown in the judgment for accepting the evidence of these witnesses.

14. The deceased - Samuben had succumbed to the injuries sustained by her, when she attempted to commit suicide. The marriage took place about two years before the FIR was filed. It seems that the marriage must have taken place in the year 1994-95. Within a short span of two years, the deceased was required to commit suicide.

15. The fact that the deceased had committed suicide has not been disputed to any extent. The said fact has been amply supported by the medical evidence in the shape of the oral testimony of Dr.Nileshkumar Kanaiyalal Shah, Ex. 17, and the documents produced by him during the course of his evidence.

16. The fact that the deceased committed suicide within a very short span of two years of marriage life, also supports the evidence of the aforesaid witness who has deposed about the ill-treatment and harassment extended by the first appellant to the deceased.

17. Therefore, there is sufficient material on record to show that the first appellant had harassed the deceased. That he had extended cruel treatment to the

deceased. That on account of the said harassment and cruel treatment, the deceased was led to decide to commit suicide. This clearly shows that the deceased committed suicide because of the above ill-treatment and harassment on the part of the first appellant. In that view of the matter, it has to be accepted that the trial court was justified in holding that the first appellant had abated the deceased in committing suicide. Therefore, there was nothing wrong on the part of the trial court, in accepting the evidence on record, with respect to the said fact and once it is found that the first appellant had extended cruel treatment to the deceased and once it is found that there was intolerable harassment extended by the first appellant to the deceased and when this harassment and cruel treatment has led to the commission of suicide by the deceased, it is amply clear that there was a direct link between the cruel treatment and harassment on the one side and the act of commission of suicide on the other. Linking the two, it is amply clear that deceased committed suicide because of the ill-treatment and cruel harassment. In that view of the matter, the trial court was justified in finding that the first appellant was guilty of an offence punishable under Section 498(A) and 306 IPC. The trial court, was therefore, justified in convicting the first appellant for the aforesaid offences. Looking to the nature of offence, looking to the period of marriage life between the first appellant and the deceased and looking to the facts and circumstances of the case, the quantum of punishment awarded by the trial court cannot be treated to be illegal, requiring the interference of this Court.

18. At the same time, the trial court has convicted and sentenced the first appellant for offences punishable under Section 498(A) and 306 that he had been the main offender. There was absolutely no necessity for sentencing him for offences punishable under Section 114 IPC. An accused person cannot be convicted simultaneously, for the main offence as well as for an offence of abatement. In other words, when the first appellant has been convicted and sentenced for offences punishable under Section 498(A) and 306, then he could not be simultaneously sentenced for an offence punishable under Section 114 IPC.

19. It is required to be considered that an abatement would always go with the main offence. Therefore, if a person is convicted for a main offence, there is absolutely no question or need for inflicting separate sentence for the commission of abatement.

20. In that view of the matter, conviction and sentence of the first appellant for offences punishable under Sections 498(A) and 306 be confirmed, the sentence awarded to the first appellant for an offence punishable under Section 114 IPC is required to be set aside.

21. So far, appellant no. 2 and 3 are concerned it is not much in dispute that appellant no. 2 is the father of the first appellant and appellant no. 3 is the mother of the first appellant.

22. The learned advocates for the parties have taken me through the evidence on record. The learned advocate for the appellants has argued the matter at length that there is absolutely no evidence on record to show that these two appellants i.e appellant nos. 2 and 3, had extended cruel treatment or harassment to the deceased. It is also his argument that the evidence does not disclose that the two appellants used to demand money. It is therefore, an argument of the learned advocate for the appellants that as there being no evidence about ill-treatment or cruelty or demand of money by appellant nos. 2 and 3, these appellants should have been acquitted by the trial court. It is, therefore, his argument that the judgment and conviction order of the trial court are improper, erroneous and illegal as far as they convict and sentence these two appellant for the aforesaid offences.

23. In order to appreciate the aforesaid argument, it would be necessary for us to read the same evidence again. Again there are three witnesses, the father, the mother and the brother. All of them have consistently deposed that appellant no. 1 used to demand money for prosecuting his study. That he used to ill-treat and harass the deceased.

24. So far, the demand of money is concerned, it is not the case of the aforesaid three witnesses or of any of them that appellant nos. 2 and 3 used to demand money from the parents of the deceased. There is no dispute about the same also.

25. There is a statement made by these witnesses that the deceased used to tell them that appellant nos. 2 and 3 were also harassing her. It is not stated as to what sort of harassment was being extended by them to the deceased.

26. The term "harassment" is required to be

considered in appropriate perspective. When one says that he or she was harassed at the hands of a particular person/persons, then he or she is required to give details as to the "harassment" said to have been suffered by him or her. A particular act may be "harassment" according to the opinion of a particular witness. The fact is required to be placed before the Court in order to permit the Court concerned to decided as to whether the said act could be treated to be "harassment" in the eye of law. In the present case, we find that except the word "harassment" nothing else has been put to the witnesses in order to find out as to what was the actual treatment and harassment extended by the two appellants to the deceased.

27. It is nobody's case that the two appellants used to beat the deceased. In other words, the actual act of harassment has not been brought on record. A particular act or omission on the part of a particular person may amount to harassment in a particular set of circumstances. The same act or omission may not amount to harassment in respect of different set of persons, in different set of circumstances. Therefore, the term "harassment" is required to be considered and appreciated in light of the facts of each particular face. And for this purpose, it would be necessary to prove as to what was the harassment extended by a particular person to a particular person.

28. In the present case, we find that except the word "harassment" nothing else has been deposed by the three witnesses who can be considered to be the star witnesses for the prosecution. It is also required to be considered that except the aforesaid three witnesses there is absolutely no material on record to show that these appellants had extended cruel treatment or harassment to the deceased.

29. It is, therefore, clear that the prosecution has not explained as to what was the actual harassment allegedly extended by the two appellants to the deceased. In absence of any particular about harassment, it could not be treated that the prosecution has proved beyond reasonable doubt that there was really a harassment in the eye of law extended by the two appellants to the deceased. In that view of the matter, these two appellants cannot be held guilty for the alleged cruel treatment said to have been caused by them to the deceased. Sameway, they can also not be treated guilty for the suicide said to have been committed by the deceased since it is not proved on record that because of

the ill-treatment and harassment on the part of these two appellants, the deceased had committed suicide. In other words, it could not be said that the prosecution has proved on record that the two appellant have committed abatement in commission of suicide by the deceased. Under these circumstances, these appellants could not be treated guilty for offences punishable under Sections 498(A) and 306.

30. Then there is the evidence to show that these two appellants had committed an act of abatement to the first appellant when the first appellant had extended cruel treatment and harassment to the deceased. There is no evidence to show that these two appellants had instigated the first appellant for extending ill-treatment and harassment to the deceased. It is not the case of the prosecution that these two appellant had instigated the first appellant and as a result of such an instigation the first appellant had ill-treated and harassed the deceased or that because of their instigation he demanded money from the in-laws through the deceased.

31. In other words, these two appellants cannot be treated to be guilty for the main offence punishable under Section 498(A) and 306 IPC or for the commission of abatement. In other words, the trial court has committed error in holding that these two appellant guilty for the offences punishable under Section 498(A) and 306 IPC read with Section 114 IPC.

32. When it is found that the trial court has committed error in appreciation of evidence and when it is found that these two appellants have been held guilty for the aforesaid offences, without any evidence on record, then this being an appeal against conviction, it becomes the duty of the Court to interfere with the said judgment and conviction order of the trial court. In other words, the judgment and conviction order of the trial court holding these two appellants guilty cannot be sustained in the eye of law and they are required to be set aside.

33. For the foregoing reasons, the appeal of the first appellant for the main offences punishable under Section 498(A) and 306 IPC is dismissed and the judgment and conviction order of the trial court holding him guilty for the offences punishable under Section 498(A) and 306 IPC are confirmed. In view of the above position, the sentence inflicted on the first appellant for an offence punishable under Section 114 IPC is set aside and the fine, if paid, by this appellant for

offence punishable under Section 114 IPC, be refunded to him. The appeal shall stand allowed qua the first appellant to the above limited extent only.

34. As regards appellant nos. 2 and 3, their appeal is allowed, the judgment and conviction order recorded by the trial court against them for offences punishable under Section 498(A) and 306 IPC read with Section 114 IPC are ordered to be set aside. These appellants are on bail, their bail bonds are cancelled. The fine, if any, paid by these appellants be refunded to them.

35. Again, at this stage it would be appropriate to record a word of appreciation for the voluntary service rendered by Mr.M S Desai to assist the Court, to represent the case of the appellant when the matter was heard.

(D. P. Buch, J.)

pravin/